



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,158	03/10/2004	Gary R. Braslawsky	037003-0308678	2640
27499	7590	06/02/2008		
PILLSBURY WINTHROP SHAW PITTMAN LLP P.O. BOX 10500 MCLEAN, VA 22102				
			EXAMINER	
			CORDERO GARCIA, MARCELA M	
			ART UNIT	PAPER NUMBER
			1654	
			NOTIFICATION DATE	DELIVERY MODE
			06/02/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket\_ip@pillsburylaw.com

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/796,158	BRASLAWSKY ET AL.
	<b>Examiner</b> MARCELA M. CORDERO GARCIA	<b>Art Unit</b> 1654

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
  - a)  The period for reply expires 3 months from the mailing date of the final rejection.
  - b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 15-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.
13.  Other: \_\_\_\_\_.

/Andrew D Kosar/  
Primary Examiner, Art Unit 1654

Continuation of 3. NOTE: With regards to applicant's arguments regarding the finality of rejection, it is noted that Applicants overcame the previous rejection (dated 1/16/07) by amendment of the claims (6/18/07) and that the new rejection (dated 12/18/07) was necessitated by the amendment. Therefore the rejection is proper and finality is maintained. With respect to the written description rejection of record, Applicants have now amended the claims to further describe their invention and provide supporting evidence of somatostatin peptides in the prior art. According to applicants, a skilled artisan at the time of the invention would have been able to readily envision the correlation between the structure of the instant conjugates (i.e., the instant somatostatin peptides conjugated to radioisotopes, cytotoxins, immunostimulatory agents, anti-angiogenic agents and chemotherapeutic agents) and that in vitro studies with 3 cell lines: IMR-32, AR42J and LS174T and in vivo studies with IM-32 and a single compound species CP1-FKMMAE (Examples 4 and 5) is sufficient to demonstrate treatment of any kind of SSTR-associated cancers since such cancers are well known in the art and because the specification does not need to describe every permutation of a claimed combination to comply with the written description requirement. Applicants' arguments have been carefully considered by Examiner but not deemed persuasive for the reasons of record and because the working examples are not representative of the broad scope of the instant claims. With respect to the 102(b) rejection, Applicants state that Dean does not teach all of the elements of the instant claims Tc-99m as described in Dean is an imaging agent. In contrast, the instant claims specify that a therapeutic agent selected from a radioisotope, a cytotoxin, an immunostimulatory agent, and anti-angiogenic agent or a chemotherapeutic agent is bonded to the somatostatin analogue. Applicants' arguments have been carefully considered but it is noted that Tc-99m reads upon a radioisotope, so the rejection is maintained. With regards to the term complexed, and as evidenced by Nosco, the linkage is a thiol covalent linkage to a cysteine. Therefore the rejection is maintained.